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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/759,218
Filing Date: January 20, 2004
Appellant(s): FARIES ET AL.

Andrew J. Aldag
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/19/07 appealing from the Office action mailed

10/30/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,875,282	Jordan et al
4,336,435	Kashyap et al
5,989,234	Ginsburg

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 71 and 72 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent 5,875,282 to Jordan et al [hereinafter Jordan].

Jordan discloses a medical device (10) for a medical item (16), the device comprising:

a base (housing 10) and at least first (88) and second (90) panels attached to the base;

a receptacle (12) defined between the panels for receiving the medical item (16), wherein the medical item has a particular temperature range for utilization; and

a temperature sensor assembly (80, 82, 84, 86) to directly measure the temperature of the medical item (16) and provide a visual indication of the measured item temperature;

wherein the temperature sensor assembly is affixed to the first panel (88) (see figures 1, 3, and 4; column 6, lines 21-36 and 56-60; column 7, lines 15-17, 31-40, and 52-55; and column 8, lines 51-61).

Furthermore, the method steps of claim 72 will naturally be followed during the operation of the device disclosed above by Jordan.

2. Claims 47-49, 52, 54, 55, 58-61, 64, 66, 67, 69, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,336,435 to Kashyap et al [hereinafter Kashyap] in view of Jordan.

Kashyap discloses a medical device (8) having a medical item (1) placed therein, the device comprising:

a base (23) and at least first (22) and second (24) panels attached to the base;

a receptacle defined between the panels for the medical item therein, wherein the item has a particular temperature range for utilization; and

a temperature sensor assembly (30) to directly measure the temperature of the item;

wherein the device is configured such that any thermal treatment of the medical item received within the receptacle occurs only via heat transfer between the item and an external environment (5) surrounding the medical device (8); the temperature sensor assembly includes a temperature sensor (31) disposed within the first panel (22) to directly measure the temperature of the item; the receptacle is configured to enable the medical item to be in thermal relation with the sensor; the device (8) is attached to a support structure/thermal treatment system (4); the temperature sensor may be an IR

temperature sensor; and the temperature sensor assembly (30) is affixed to the first panel (22) (see figures 2, 4, and 6; column 3, lines 10-16 and 39-48; and column 4, lines 10-36).

Kashyap does not disclose the assembly comprising a display for visually indicating the measured temperature of the medical item.

Jordan discloses a medical device (10) for a medical item, the device comprising a housing defining a receptacle for receiving the medical item; and a temperature sensor assembly for directly measuring the temperature of the medical item, the assembly having a display for visually indicating the measured temperature of the medical item by using a temperature sensing strip (80) that provides a digital temperature measurement indicated by a digital temperature display. Jordan teaches that it is useful to provide the user with a visual indication of the actual medical item temperature as it is heated (see figures 1, 3, and 4; column 6, lines 21-36 and 56-60; column 7, lines 15-17, 31-40, and 52-55; and column 8, lines 51-61).

Referring to claims 47 and 59, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the assembly of Kashyap by providing a display on the support structure/thermal treatment system for visually indicating the measured temperature of the medical item, as taught by Jordan, in order for the user to determine the actual temperature of the contents in the medical item before using the contents on a patient, and since Jordan teaches that it is useful to provide the user with a visual indication of the actual medical item temperature.

Furthermore, the method steps of claims 59-61, 64, 66, 67, and 70 will naturally be followed during the normal operation of the device disclosed above by Kashyap and Jordan.

3. Claims 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,989,238 to Ginsburg in view of Jordan.

Ginsburg discloses a medical device (10) for a medical item (30), the device comprising:

- a base and at least first and second panels attached to the base;
- a receptacle (28) defined between the panels for receiving the medical item (30), wherein the medical item has a particular temperature range for utilization;
- a temperature sensor assembly (including a temperature sensor 34) to directly measure the temperature of the medical item; and
- visual means (24) for displaying a set point temperature for the medical device; wherein the temperature sensor assembly is affixed to one of the first panel, second panel, and base (e.g., the bottom panel of the housing 12) (see figures 1 and 2; column 2, lines 25-35 and 45-53; column 3, lines 2-7, 18-22, and 26-31; and column 4, line 48-column 5, line 17).

Ginsburg does not disclose the assembly comprising means for visually indicating the measured temperature of the medical item.

Jordan discloses a medical device (10) for a medical item, the device comprising a housing defining a receptacle for receiving the medical item; and a temperature sensor

assembly for directly measuring the temperature of the medical item, the assembly having means for visually indicating the measured temperature of the medical item by using a temperature sensing strip (80) that provides a digital temperature measurement indicated by a digital temperature display. Jordan teaches that it is useful to provide the user with a visual indication of the actual medical item temperature (see figures 1, 3, and 4; column 6, lines 21-36 and 56-60; column 7, lines 15-17, 31-40, and 52-55; and column 8, lines 51-61).

Referring to claims 71 and 72, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Ginsburg by providing the temperature sensor assembly with means for visually indicating the measured temperature of the medical item, as taught by Jordan, in order for the user to determine the actual temperature of the contents in the medical item before using the contents on a patient, and since Jordan teaches that it is useful to provide the user with a visual indication of the actual medical item temperature.

Furthermore, the method steps of claim 72 will naturally be followed during the normal operation of the device disclosed above by Ginsburg and Jordan.

(10) Response to Argument

Appellant's arguments (page 11) that Jordan fails to anticipate claims 71 and 72 because he does not disclose the display and the temperature sensor being mounted on the same panel are not persuasive since this feature upon which Appellant relies is not recited in the rejected claims,

i.e., the claims do not state that the temperature sensing assembly and the display are affixed to the same panel.

Appellant's arguments (page 15) that Kashyap fails to disclose that the medical device (21) visually indicates temperature are not persuasive since this feature upon which Appellant relies is not recited in the rejected claims. Furthermore, Appellant's arguments (page 15-16) that the medical device (21) does not and would not likely be modified to visually indicate temperature are not persuasive since the rejections are based on providing the display on the support structure/thermal treatment system (4) and not on the medical device (21). Also, Appellant's arguments that Kashyap fails to disclose that thermal treatment of the medical item (1) placed within the medical device (21) cannot occur only via heat transfer between the medical item and the environment surrounding the medical device are not persuasive because the microwaves are generated within the environment surrounding the medical device, which then heat the medical item. Therefore, the medical item is heated by heat transfer from a location outside of the medical item and the medical device.

Appellant's arguments (page 17) that Ginsburg and Jordan fail to disclose the display and the temperature sensor being mounted on the same panel are not persuasive since this feature upon which Appellant relies is not recited in the rejected claims, i.e., the claims do not state that the temperature sensing assembly and the display are affixed to the same panel.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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